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DEPARTMENT OF STATE REVENUE

**SUPPLEMENTAL LETTER OF FINDINGS NUMBER 92-0378 AGI
INDIVIDUAL INCOME TAX
For Years 1989 THROUGH AND INCLUDING 1990**

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

1. **Adjusted Gross Income Tax – IRC Section 179**

Authority: IRC Section 179

The taxpayer protested the auditor's failure to adjust the income for IRC Section 179 deduction.

2. **Adjusted Gross Income Tax – Estimated Tax Payment**

Authority:

The taxpayer protested the denial of a credit for an estimated tax payment.

3. **Adjusted Gross Income Tax – Unreported Dividend Income**

Authority:

The taxpayer protested the auditor's calculation of unreported dividend income.

4. **Adjusted Gross Income Tax – Disallowed Business Expenses**

Authority:

The taxpayer protested the disallowance of certain business expenses.

5. **Adjusted Gross Income Tax – Underreported Revenue**

Authority:

The taxpayer protested the auditor's assessment of additional revenue.

6. **Administrative – Negligence Penalty**

Authority: IC 6-8.1-10-2; IC 6-8.1-20-2.1(e); 45 IAC 15-11-2(e)

The taxpayer protested the assessment of the negligence penalty.

STATEMENT OF FACTS

The taxpayer owns two small corporations. One of the corporations is subchapter S Corporation. The other corporation is treated as a small business corporation for gross income tax purposes, but is a regular corporation for federal income tax purposes.

DISCUSSION

1. Adjusted Gross Income Tax – IRC Section 179

The taxpayer protested the fact that the auditor did not include the S Corporation's Internal Revenue Code Section 179 depreciation deduction in tax year 1988. The subchapter S Corporation is permitted a section 179 deduction. The taxpayer stated that the K-1 showed a \$5,250 section 179 deduction, which the auditor overlooked. The Department agrees that the IRC Section 179 deduction of \$5,250 for tax year 1988 was overlooked by the auditor, and should have been included in the calculation of the subchapter S Corporation's taxable income.

FINDINGS

The taxpayer's protest is sustained. The subchapter S Corporation is permitted an IRC Section 179 depreciation deduction and the auditor overlooked it.

2. Adjusted Gross Income Tax – Estimated Tax Payment

The taxpayer protested the denial of a credit for estimated taxes paid. The taxpayer concedes this issue.

FINDINGS

The taxpayer protest is denied.

3. Adjusted Gross Income Tax – Unreported Dividend Income

The taxpayer protested the amounts the auditor calculated as unreported Dividend income from the regular corporation. The auditor calculated the following numbers: 1988 - \$22,667; 1989 - \$10,000; 1990 - \$22,810. The Internal Revenue Service audited the taxpayer in 1990. The unreported dividends for 1990 were \$6,600. The Department will agree to accept the following amounts as unreported dividends: 1988 - \$22,461; 1989 - \$10,000; and 1990 - \$6,600.

FINDINGS

The taxpayer's protest is denied to the extent the Department finds that the taxpayer did underreport dividend income.

4. **Adjusted Gross Income Tax – Disallowed Business Expenses**

The taxpayer protested the disallowance of certain business expenses. The taxpayer substantiated certain of the expenses, and the Department will agree to adjust the disallowance to the following amounts: 1988 - \$6,022.00; 1989 - \$6,506.00; 1990 - \$4,999.00.

FINDINGS

The taxpayer's protest is partially sustained.

5. **Adjusted Gross Income Tax – Underreported Revenue**

The taxpayer protested the auditor's assessment of tax on additional revenue. The taxpayer alleges that in 1988 and 1989 the revenues were reported correctly and that the auditor inadvertently added the C Corporation's revenues to the S Corporation's revenues as if they were one and the same. The taxpayer provided adequate documentation to confirm that this was in fact what happened. The originally reported revenue amounts are correct. In 1990, the taxpayer understated its revenue by \$35,076.00.

FINDINGS

The taxpayer's protest is partially sustained. The 1988 and 1989 revenues were not understated. The 1990 and 1991 revenues were understated by \$35,076 and \$3,612 respectively.

6. **Administrative – Negligence Penalty**

The taxpayer protested the assessment of the negligence penalty. Taxpayer protests the imposition of the ten percent (10%) negligence penalty. The negligence penalty imposed under IC 6-8.1-10-2.1(e) may be waived by the Department where reasonable cause for the deficiency has been shown by the taxpayer. Specifically:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-2 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty-giving rise to the penalty imposed under this section. 45 IAC 15-11-2(e).

The taxpayer provided proof that the deficiency was due to reasonable cause and not

negligence.

FINDINGS

The taxpayer's protest of the penalty imposed is sustained.